



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CMP (MD) No.2034 of 2020
in
CRP (MD) SR.No.2791 of 2020

Murugesan

... Petitioner

Vs.

Vijayalakshmi (died)

1.Karuppanan

2.Nageswaran

3.Sridevi

4.D.Mahalakshmi

... Respondents

Petition filed under Section 5 of the Limitation Act to condone the delay of 347 days in filing the above Civil Revision Petition against the fair and decreetal order made in I.A.No.113 of 2018 in O.S.No. 139 of 2012 by the District Munsif Court Palani, dated 27.09.2018.

For Petitioner : Mr.D.Venkatesh

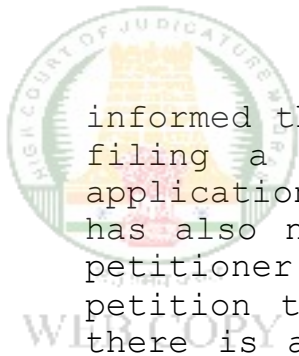
For Respondents : No appearance

ORDER

This petition is filed to condone the delay of 347 days in filing the above Civil Revision Petition against the fair and decreetal order passed in I.A.No.113 of 2018 in O.S.No.139 of 2012 by the District Munsif Court Palani, dated 27.09.2018.

2.Though the respondents were served with notice and their names printed in the cause list, none appeared for the respondents.

3.The learned counsel for the petitioner would submit that the respondents are the sisters of the petitioner and they filed a suit in O.S.No.139 of 2012 for partition in the year 2012 and notice was served to the petitioner and he has also entered appearance through his counsel. Subsequently, during cross examination, his counsel reported no instructions and the same was not intimidated to the petitioner. Therefore, he could not participate in the proceedings. Thereafter, he got the knowledge about the *ex parte* decree only during final decree proceedings and his counsel has not



informed the same to the petitioner. Therefore, there is a delay in filing a petition to set aside the *ex parte* decree and that application was dismissed. Further it is submitted that his counsel has also not intimated the dismissal of the petition filed by the petitioner before the trial Court to condone the delay in filing a petition to set aside the *ex parte* preliminary decree. Therefore, there is a delay of 347 days in filing the present petition. The delay is neither wilful nor wanton and due to non communication of the counsel the delay has occurred and therefore, prayed for allowing this petition.

4.Heard the learned counsel for the petitioner and perused the entire materials available on record.

5.Admittedly, the petitioner is the brother of the respondents. They filed a suit against the petitioner in O.S.No.139 of 2012 and the suit was decreed *ex parte*. Subsequently, preliminary decree was passed and when the matter was pending for passing final decree, the petitioner filed a petition to condone the delay in filing a petition to set aside the *ex parte* preliminary decree and that application was dismissed by the trial Court, against which, he filed the present Civil Revision Petition with the delay of 347 days. Initially the petitioner appeared through his counsel and thereafter he has not proceeded with the matter and now he blamed his counsel that he has not intimated the *ex parte* preliminary decree to the petitioner. Thereafter, he filed a petition to condone the delay in filing a petition to set aside the *ex parte* preliminary decree and that petition was dismissed and thereafter he kept quite for some time and now he filed the present petition with a delay of 347 days, that too at the time of passing final decree, which shows that the petitioner has acted as a mute spectator throughout the proceedings and only to prevent the passing of final decree, he filed the present petition. Therefore, this Court is of the view that the petitioner has not approached the Court with clean hands. Under these circumstances, this Court does not find any reason to allow this petition and the petitioner is not entitled to get the relief sought for by him. The reason stated in the affidavit is not satisfactory. Therefore, this petition is dismissed. No costs. Consequently, CRP(MD)SR.No.2791 of 2020 is rejected.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

The District Munsif Court, Palani.

+1 CC to M/s.D.VENKATESH, Advocate (SR-12176[F] dated 18/03/2020)

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CMP (MD) No.2034 of 2020

in

CRP (MD) SR.No.2791 of 2020

17.03.2020

mj

TK/12.05.2020/3P/3C